



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

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June 5, 2015

Mr. John Study - # 129153  
Wabash Valley Correctional Center  
P.O. Box 1111  
Carlisle, Indiana 47838

*Re: Formal Complaint 15-FC-136(a); Alleged Violation of the Access to Public Records Act by the Thorntown Police Department. (Amended)*

Dear Mr. Study,

This advisory opinion is in response to your formal complaint alleging the Thorntown Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded to your complaint via Mr. Frank Clark, Chief Deputy. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 15, 2015.

## BACKGROUND

Your complaint dated April 8, 2015 alleges the Department violated the Access to Public Records Act by failing to respond to your public record request.

On February 26, 2015, you submitted a public records request to the Department for a dash cam related to a specific incident. To date, you have not received a response. The Department responded to your complaint by stating the camera you requested information for is no longer in use nor does the Department have any literature on that particular camera.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Thorntown Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to



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inspect and copy the Department's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Because the Department did not timely acknowledge your complaint, it is in technical violation of the APRA. Such a violation is moot; however, because the Department does not have the records you seek. A public agency is not required to produce a record which does not exist. Since the records are not in the Department's possession, they cannot be provided.

However, there is a question of fact regarding whether the Department should still possess the records. The local retention schedule for Vouchers/Claims & Purchase Orders is Gen 10-11, which mandates that a local agency keep such records for ten (10) years. The Department's response does not indicate when the camera in question was purchased. The APRA provides that public records are not to be destroyed until the retention schedule has run. However, the facts do not indicate whether the schedule has run; therefore, it cannot be determined if the Department's failure to keep records is an APRA violation.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Thornton Police Department has violated the Access to Public Records Act for not timely acknowledging your request.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is positioned above the printed name.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Frank Clark, Chief Deputy